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(1)

Supreme Court
FILED

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No. ____

In the Supreme Court of the United States

JEFFREY M. GRAY,

Petitioner,

v.

LISA A. SORENSON,

Respondent.

On Petition for a Writ of Certiorari to the Maine Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has said in *Thompson v. Thompson*, 484 U.S. 174 (1988) that it is generally presumed that States and state courts are willing, able and will follow the federally mandated requirements of Title 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980, (PKPA or Act) Full Faith and Credit Given to Child Custody Determinations.

1. Whether the Maine Supreme Judicial Court erred that it complied with its federal duty to follow Title 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980 (Act) as required by the Full Faith and Credit Clause of Article IV §1 and the Supremacy Clause of Article VI of the Constitution of the United States when the State of Maine courts were unwilling to recognize and enforce a custody decree entered by its sister State of New Hampshire while proceedings were still pending in that state and instead exercised concurrent jurisdiction over the custody dispute and entered an ex parte custody decree that effectively "overturned" the same custody decree that was "reversed" by Supreme Court of New Hampshire before both natural non-resident parents were given notice and opportunity to be heard?

2. Whether the Maine Supreme Judicial Court erred in *In RE: Jonathon G. et al* in holding that no error of law was committed when notice to the two out-of-state natural parents was waived by the court thus not providing them an opportunity to be heard and then entered a custody decree that deprived non-resident parents custody of their children violate the parents procedural due process rights protected by the Due Process Clause of the Fourteenth Amendment and violate their fundamental "liberty interest" of a natural parent[s] right to care, custody and control over their

children protected under the substantive component of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States?

In *DeBoer v. DeBoer*, 509 U.S. 1301 (1993) Justice Stevens held that "[C]ourts are not free to take children from their parents simply by deciding another home appears more advantageous" and "[n]or does federal law authorizes unrelated persons to retain custody of a child whose natural parents have not been found unfit simply because they may be better able to provide for a children's future and their education."

3. Whether Maine's Revised Statute 18-A M.R.S.A. §5-206. which allows "any person" or persons be appointed as a guardian over a natural parents' children and retain custody without a finding of parental unfitness and 18-A M.R.S.A § 5-204(c) which allows the appointment of a guardian without the consent of the natural parents regardless of the level of jeopardy to the child which would rise to the level of parental unfitness simply because the court may find that an undefined and unconstitutionally vague "intolerable living situation" exists and that it is in the best interest of the child to appoint a guardian violate the fundamental "liberty interests" of a natural parents right to make decisions for, care, custody and control over their children protected by the substantive component of the Due Process Clause of the Fourteenth Amendment of the United State Constitution and therefore unconstitutional?

LIST OF PARTIES

RULE 14.1(b) STATEMENT

A list of all parties to all the proceedings in the Supreme Court of New Hampshire whose judgments are the subject of this petition are as follows;

Docket No. Yor-06-320
In RE: Jonathon Gray and Leeanna Gray

Petitioner-Appellant, Petitioner: Jeffrey M. Gray, Father
Respondent-Appellee, Respondent: Lisa A. Sorenson

RULE 29.4(c) STATEMENT NOTIFICATION OF STATE ATTORNEY GENERAL

The constitutionality of a statute of the State of Maine has been drawn into question as being repugnant to the Constitution of the United States of America and is unconstitutional. Neither the State of Maine, nor any agency officer, or employee thereof is a party. Title 28 U.S.C. § 2403(b) may apply and the initial document filed in this Court has been served upon the State of Maine Attorney General who is Mr. Steven Rowe, Office of the Attorney General, 6 House Station, Augusta, Maine 04333.

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No._____

In The
Supreme Court of the United States
OCTOBER TERM, 2006

JEFFREY M. GRAY,
Petitioner,

v.

LISA A. SORENSON,
Respondent.

PETITIONER'S PRAYER FOR A WRIT OF CERTIORARI

The Petitioner, JEFFREY M. GRAY, respectfully prays that a writ of certiorari issue to review the judgment of the Maine Supreme Judicial Court entered in the entitled proceeding Docket No. Yor-06-320 IN RE: Jonathon G. et al. on January 9, 2007.

OPINIONS BELOW

The January 9, 2007 Decision of the Maine Supreme Judicial Court in Docket No. Yor-06-320 IN RE: Jonathon G. et al. attached at Appendix A, page 1a is not reported.

STATEMENT OF JURISDICTION

The Petitioner, Jeffrey M. Gray invoked subject matter jurisdiction under Federal Public Law Title 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980 under its heading Full Faith and Credit Given to Child Custody Determinations; the Full Faith and Credit provision of Article IV §1 of the United States Constitution; the Laws of the United States under the Supremacy Clause of Article VI §2 of the United States Constitution; his fundamental "liberty interest" of a natural parent in the care, custody and management of his children protected by the substantive component of the Due Process Clause of the Fourteenth Amendment of the United States Constitution; his procedural due process rights protected by the Procedural Due Process Clause of the Fourteenth Amendment of the United States Constitution, thereby invoking federal question jurisdiction.

On January 27, 2006 the Opinion of the Supreme Court of New Hampshire in Case No. 2004-0738 In the Matter of Jeffrey Gray and Janette Gray GRANTED Jeffrey Gray's and Janette Gray's appeal when the Supreme Court struck down and reversed a lower district court's child custody decree that granted physical custody of Mr. Gray's and the childrens' mother, Janette Gray's two biological children to Lisa Sorenson of the State of Maine, a third party intervener in the parents New Hampshire divorce matter. The decision of the Supreme Court of New Hampshire resulted in favor of the childrens' natural parents, Jeffrey Gray and Janette Gray

On January 31, 2006 Lisa Sorenson immediately forum shopped the courts of the State of Maine requesting the same child custody determination be "more favorable" than having being "reversed" four days earlier in New Hampshire. On February 7, 2006 the State of Maine York County Probate

Court "overturned" the judgment of the Supreme Court of New Hampshire's "reversal" of the custody decree to Lisa Sorenson by entering an ex parte temporary guardianship custody decree "on the bench" in her favor and issued its written order dated February 10, 2006. On May 2, 2006 the York County Probate Court entered a permanent guardianship custody decree in favor of Lisa Sorenson retaining custody of Mr. Gray's and the childrens' mother, Janette Gray's children .

The June 13, 2006 Order of the Supreme Court of New Hampshire in Case No. 2006-0349 Petition of Jeffrey Gray GRANTED Mr. Gray's Petition for a Writ of Certiorari. On November 28, 2006 the Supreme Court of New Hampshire entered a 3JX (Three Judge Expedited) Order that DENIED Mr. Gray's writ of certiorari. The jurisdiction of this Court is thus invoked under 28 U.S.C. §1257(a) to review all the judgments of the Supreme Court of New Hampshire under a separate petition for a writ of certiorari to the Supreme Court of New Hampshire filed simultaneously with this petition. That petition has been timely filed under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5 because an application for an extension of time within which to file a petition for a writ of certiorari to the Supreme Court of New Hampshire in the entitled case Jeffrey Gray v. Lisa Sorenson, Application No. 06A820 was presented to Justice Souter, who on February 27, 2007 extended the time to and including April 27, 2007.

On May 18, 2006 Mr. Gray appealed to the highest court of the State of Maine, the Maine Supreme Judicial Court. The judgment of the Maine Supreme Judicial Court in Docket No. Yor-06-320 In RE: Jonathon Gray et al. was entered on January 9, 2007 which DENIED Mr. Gray's appeal thus created the current intractable impasse between the two states of New Hampshire and Maine regarding Lisa

Sorenson's custody of Jeffrey Gray and Janette Gray's children. The jurisdiction of this Court is thus invoked under 28 U.S.C. §1257(a) to review the judgment of the Maine Supreme Judicial Court.

This petition is timely filed under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5 because an application for an extension of time within which to file a petition for a writ of certiorari to the Maine Supreme Judicial Court in the entitled case Jeffrey Gray v. Lisa Sorenson, Application No. 06A821 was presented to Justice Souter, who on February 27, 2007 extended the time to and including April 27, 2007.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITIED STATES OF AMERICA-1787

ARTICLE. IV. Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

ARTICLE. IV. Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

ARTICLE. VI Clause. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound

thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

BILL OF RIGHTS ARTICLES OF AMENDMENTS TO THE CONSTITUTION OF THE UNITIED STATES OF AMERICA-1787

The Fourteenth Amendment

ARTICLE. [XIV.]. Section. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL PUBLIC LAW BY AN ACT OF CONGRESS OF THE UNITED STATES OF AMERICA

Title 28 U.S.C. §1738. Full Faith and Credit
Title 28 U.S.C. §1738A. Parental Kidnapping Prevention Act of 1980 (PKPA or Act) Full Faith and Credit Given To Child Custody Determinations

The full text of the PKPA of is attached at Appendix C, Page 95a & 96a.

MAINE REVISED STATUTES ANNOTATED (M.R.S.A.)

The full text of the relevant State of Maine Statutes state statute law is attached at Appendix C, Page 103a.

MAINE COURT RULES OF PROBATE PROCEDURE

The full text of the relevant State of Maine Rules of Probate Procedure is attached at Appendix C, Page 117a.

STATE OF NEW HAMPSHIRE REVISED STATUTES ANNOTATED (NH RSA)

The full text of the relevant State of New Hampshire Revised Statutes Annotated state statute law is attached at Appendix C, Page 123a.

STATEMENT OF THE CASE

This case arises out of child custody forum shopping of state courts that resulted in the entry of a conflicting state custody decree by Maine with its sister State of New Hampshire. Jeffrey M. Gray and Janette L. Gray were married and two children were born of their marriage, Jonathon M. Gray, and Leeanna E. Gray. Both children were born in the State of New Hampshire. Jeffrey and Janette Gray and their family were residents and citizens of the State of New Hampshire. In September of 1999 Jeffrey commenced an action in Rockingham County Salem District Court Family Division at Salem (Salem District Court) in the State of New Hampshire seeking final dissolution of his marriage to Janette and custody of their minor children. The Court entered the matter under Docket No. 1999-M-0183 In the Matter of Jeffrey M. Gray and Janette L. Gray. In October, 1999 the Salem District Court issued a Temporary Decree that awarded Jeffrey sole physical custody of the minor children. (*See* App. D, Page 79a). Jeffrey raised and cared for the children in Salem, New Hampshire for the next three years while Janette resided in Massachusetts.

Jeffrey and Janette were divorced on August 7, 2002. (*See* App. D, Page 166a, 170a). The matter became final on September 10, 2002. The Salem District Court's final Decree of Divorce included Mr. Gray's Proposed Finding of Fact and Ruling of Law dated August 7, 2002 granted in part. (*See* App. D, Page 169a, 170a). Mrs. Gray was awarded sole custody of the children subject to Mr. Gray's visitation with the children. The children then relocated to Massachusetts where Janette continued to reside. The Court decreed in the divorce decree pursuant to New Hampshire Revised Statutes Annotated (NH RSA) Uniform Child Custody Jurisdiction Act (UCCJA) RSA 458-A:3, I(b), New Hampshire shall be deemed the children's "home" state for purposes of any litigation on custody or visitation. (*See* App. D, Page 167a). The Court made a ruling of law in the divorce decree; Ruling of Law No. 59, "New Hampshire is the children's home state within the meaning of RSA 458-A:3 (New Hampshire's version of the Uniform Child Custody Jurisdiction Act) and 28 U.S.C. §1738(b)(4), the Federal Parental Kidnapping Prevention Act." (*See* App. D, Page 178a).

The Salem District Court subsequently modified the Decree of Divorce when it granted Mr. Gray and Ms. Gray joint legal of the children. On July 30, 2004 Jeffrey and Janette ended their dispute and entered into a written "Agreement" to share joint physical and legal custody of the children who would resume residing with Mr. Gray. The Salem District Court entered an order dated July 30, 2004 that modified the Decree of Divorce pursuant to the parents' "Agreement." (*See* App. B, Page 90a). On August 26, 2004 the parents amended their prior agreement to reflect that Janette was going not going to relocate to New Hampshire; the parents executed a written "Stipulation" and the Salem District Court Order modified the Decree of Divorce

pursuant to the parents "Stipulation." (*See* App. B, Page 82a). All other provisions of the July 30th order which were not inconsistent with the modifications remained in full force and effect. (*See* App. B, Page 86a).

On August 28th, 2004 Mr. Gray obtained custody of his children pursuant to the parents July 30th, 2004 "Agreement". (*See* App. B, Page 90a, 92a). The children began school on September 1, 2004 in Salem, New Hampshire; Mr. Gray was employed as a civil engineer, was actively searching for a more permanent home and was caring for his children as a fit parent.

On October 8, 2004 the Salem District Court, *sue sponte* upon its own motion, held a review hearing in the divorce matter. Mr. Gray and Ms. Gray were in attendance, both represented by their counsel and also an unwelcome intervener, Lisa Sorenson of the State of Maine. The court took exception to the children living a hotel despite Mr. Gray adequately caring for his children as a fit parent. The October 15, 2004 Order of the Salem District Court entered an order that removed the children from their natural parents who had not been judicially found unfit and entered a custody determination that placed the parents' children with Lisa Sorenson. (*See* App. D, Page 163a). The court denied both Mr. Gray and Ms. Gray an opportunity to heard on the matter despite the parents repeated requests to be heard and their repeated requests to the court to reconsider. The hearing lasted only seventeen minutes. (*See* App. D, Page 151a, 152a).

Jeffrey and Janette appealed to the Supreme Court of New Hampshire, they requested that the lower district courts order custody decree to Lisa Sorenson be reversed and vacated and that their children be returned to the parents

custody. The matter was taken up for appellate review and entered into the Courts docket as "Case No. 2004-0738 In the Matter of Jeffrey Gray and Janette Gray." The parents argued the District Court Order was wrong and it violated the parents fundamental "liberty interest" of natural parents in the care, custody and management of their children protected by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and as in this Courts case in *Troxel v. Granville*, 530 U.S. 57 (2000). Mr. Gray and Ms. Gray also argued that the court violated the parents procedural due process rights which is protected by the Procedural Due Process Clause of the Fourteenth Amendment of the Constitution of the United States when on October 8th, 2004 the trial court refused the parents an opportunity to heard on the matter despite the parents repeated requests to be heard and their repeated requests to the court to reconsider and then entered an order that deprived the parents of custody of their children. (*See* App. D, Page 148a, 152a).

On March 15, 2005 the Salem District Court entered an Order that the issues of placement of the parents children and child support ordered to Lisa Sorenson have been appealed to the New Hampshire Supreme Court and there has been no stay of those orders, consequently, those orders are temporary orders and were reaffirmed by the Court. (*See* App. D, Page 161a).

On February 22, 2005 Mr. Gray registered his and Ms. Gray's New Hampshire child custody orders in the State of Maine where the children resided pending the parents appeal in New Hampshire. Mr. Gray filed three separate "State of Maine Affidavit And Request For Registration Of A Foreign Order" in the Biddeford District Court in Biddeford Maine which entered the registrations under Docket No. BID-FM-

05-89 Jeffrey M. Gray v. Janette L. Gray pursuant to Maine's Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 1731et seq. Each child custody order registered was authenticated, certified, signed and sealed by the Clerk of the Salem District Court of New Hampshire. The registered orders were the October 15th, 2004 order in favor of Lisa Sorenson on appeal to the Supreme Court of New Hampshire, (*See* App. B, Page 72a), and Mr. Gray's own child custody order[s] in the parents Decree of Divorce dated July 30th, 2004 and August 26, 2004, both of which had not been modified or on appeal. (*See* App. B, Page 79a and 87a). On May 4, 2005 the Biddeford District Court issued three separate "Notices of Registration" for each of the three child custody orders Mr. Gray registered stating that pursuant to 19-A M.R.S.A. § 1765 of the Uniform Child Custody Jurisdiction and Enforcement Act the New Hampshire child custody orders were registered as of February 22, 2005. (*See* App. B, Page 65a, 67a and 69a). Lisa Sorenson was notified by the Biddeford District Court because she had physical custody of the children and it was required by Maine state law, Mr. Gray requested the Court to notify her which they did. (*See* App. B, Page 71a). Lisa Sorenson did not file any request for a hearing to contest the validity of the registered order and resulted in confirmation of the order by operation of law and precludes further contest with respect to any matter that could be asserted pursuant to Maine Uniform Child Custody Jurisdiction and Enforcement Act 19-A M.R.S.A. §1765(*See* App. B, Page 65a, 67a, 69a, and App. C, 115a-117a).

The July 8, 2005 Order of the Supreme Court of New Hampshire requested the Administrative Advocacy Clinic at Franklin Pierce Law Center to file an amicus curiae brief in the parents appeal to address the issue of applicability and effect of this Courts case in *Troxel v. Granville*, 530 U.S. 57

(2000). (*See* App. D, Page 152a). On August 8, 2005 Mary Pilkington-Casey, Esq. filed a brief as amicus curiae. (*See* App. D, Page 148a, 152a). Mr. Gray filed a reply brief to the brief of amicus curiae. (*See* App. D, Page 148a). The August 25, 2005 Order of the Supreme Court of New Hampshire allowed Lisa Sorenson to file a brief on the issues raised in the appeal. (*See* App. D, Page 159a). Lisa Sorenson filed a brief. (*See* App. D, Page 147a, 152a). On September 29, 2005 the Supreme Court of New Hampshire heard oral argument from Mr. Gray. (*See* App. D, Page 148a). On December 5, 2006 the Salem District Court issued a "Notice of Hearing – Marital" by Order of the Family Division for a scheduled "Review Hearing" on March 27, 2006, Lisa Sorenson of the State of Maine was notified of the pending hearing in New Hampshire. (*See* App. D, Page 157a).

On January 27, 2006 the Supreme Court of New Hampshire issued its judgment by written Opinion. (*See* App. D, Page 147a). The Court rejected the argument of amicus curiae that the trial court's custody determination comports with this Courts case in *Troxel v. Granville*, 530 U.S. 57 (2000) and rejected Lisa Sorenson's argument urging the Supreme Court of New Hampshire to uphold the trial courts determination in her favor, arguing that the children were in danger if left in the care of their parents. (*See* App. D, Page 152a). Neither parent had been found to be unfit from the Opinion. The Supreme Court made a finding that the case below was a divorce proceeding between two parents "who had not been found unfit." (*See* App. D, Page 155a). The Court reversed the trial court's custody determination to Lisa Sorenson and remanded the case to the trial court for further proceedings consistent with the Opinion. (*See* App. D, Page 148a, 155a, 156a). The Supreme Court further held that "[w]e reach the same result under the Federal Constitution" and adjudged in favor of the

natural parents, Jeffrey Gray and Janette Gray. (*See* App. D, Page 155a). The Opinion was subject to a 10-day period for motions for rehearing. On January 27, 2006 the Supreme Court of New Hampshire entered an Order that dismissed Mr. Gray's pending motions. (*See* App. D, Page 145a).On January 27, 2006 Mr. Gray, through his New Hampshire counsel, Ms. Paula J. Werme, filed in the Salem District Court a motion requesting the return of his children to his custody based on the Supreme Court of New Hampshire's judgment. (*See* App. D, Page 140a). Upon that motion, on January 30, 2006 the Salem District Court entered an Order that the matter shall be scheduled for an appropriate hearing after the court received the certified Order from the New Hampshire Supreme Court. (*See* App. D, Page 139a).

On January 31, 2006 Lisa Sorenson forum shopped the courts of the State of Maine by filing an ex parte petition for temporary and permanent guardianship over Mr. Gray's and the childrens' mother, Janette Gray's children in the York County Probate Court (Probate Court) in Alfred, Maine. Lisa Sorenson made allegations in her petition that both parents, Mr. Gray and Ms. Gray were found unfit by the New Hampshire courts and abused their children and requested the same child custody determination be "more favorable" to her than that of being "reversed" four days earlier by the Supreme Court of New Hampshire. Her Maine petition was filed while proceedings in New Hampshire were pending; Mr. Gray's January 27th, 2006 motion in the Salem District Court for return of his children in the Salem District Court, the Salem District Courts January 30th, 2006 Order ordering that a hearing in the matter will be scheduled as soon as they receive the certified mandate from the Supreme Court of New Hampshire. Lisa Sorenson also filed her Maine petition while the time for filing post-opinion motions was tolling in the Supreme Court of New Hampshire and

without filing any post-opinion motions. Lisa Sorenson failed to notify either the Supreme Court of New Hampshire or the Salem District Court of the Maine court proceedings as required by New Hampshire state law. On February 7, 2007 the York County Probate Court held an expedited hearing on Lisa Sorenson's petition. The parents were not present; neither parent received any notice of the hearing. The Probate Court (Judge Robert M.A. Nadeau) dictated an immediate "on the bench" Ex Parte Order of Temporary Guardianship custody decree "in favor" of Lisa Sorenson with full knowledge of the Supreme Court of New Hampshire's judgment four days earlier. On February 10, 2006 the Clerk of the Probate Court issued the courts written Ex Parte Order on Temporary Guardianship and scheduled a hearing on the matter on April 19, 2006. (*See* App. B, Pages 36a). The Official Transcripts of the February 7, 2006 expedited hearing in the York County Probate Court is attached in Appendix B. (*See* App. B, Pages 40a thru 64a).

On February 13, 2006 the Clerk of the Supreme Court of New Hampshire issued the Opinion Certified as Mandate to the Salem District Court. (*See* App. D, Page 147a). On or about February 16, 2007 Mr. Gray learned about the State of Maine court proceedings and the Probate Court's Ex Parte Order on Temporary Guardianship. Mr. Gray immediately retained a Maine attorney, Mr. Thomas Greco. On February 23, 2006 Lisa Sorenson filed a petition in the Salem District Court in New Hampshire to register the Maine Probate guardianship custody decree in the State of New Hampshire. The Salem District Court entered the matter under two separate dockets, Docket No. 2006-G-0010 In the Matter of Jonathon Gray and Docket No. 2006-G-0011 In the Matter of Leeanna Gray and Mr. Gray, through his New Hampshire counsel, Paula J. Werme filed a written objection in the Salem District Court.

The Salem District Court refused to schedule the remand hearing Ordered by the Supreme Court of New Hampshire's Mandate dated February 13, 2006, instead, on March 1, 2006 the Salem District Court *sue sponte* entered an Order that the Salem District Court "defers" jurisdiction to the State of Maine." (*See* App. D, Page 138a). Mr. Gray, through counsel filed an objection to the Salem District Court's March 1st, 2006 order. On February 28th, 2006 Mr. Gray, through his Maine counsel, filed a motion to vacate the guardianship based on lack of subject matter and personal jurisdiction under the 28 U.S.C. §1738A Parental Kidnapping Prevention Act. (*See* App. B, Page 25a). Mr. Gray also filed an affidavit in support of his motion. (*See* App. B, Page 32a). The Probate Court denied Mr. Gray's request on March 22, 2006. (*See* App. B, Page 31a).

On March 31, 2006 Mr. Gray, through his New Hampshire counsel filed a Motion to Show Cause in the Supreme Court of New Hampshire. On April 3, 2006 the Supreme Court of New Hampshire entered an Order that on February 13, 2006 the clerk of the Supreme Court issued the mandate in the case returning jurisdiction of the matter to the Salem Family Division and that the father's ex-parte motion for enforcement of the custody decree is denied without prejudice to the father seeking relief in the family division and the father's motion to show cause is denied." (*See* App. D, Page 137a).

On April 7, 2006 Mr. Gray filed an Ex Parte Motion for Enforcement of his registered July 30th and August 26th, 2004 New Hampshire custody degrees in the Biddeford District Court in Biddeford, Maine. The Court (Judge Christine Foster) granted Mr. Gray's motion and Ordered "after having read the Probate Courts order," "believe that it was unenforceable against Mr. Gray" and that "further

proceedings in this matter should be concluded in the State of New Hampshire." (*See* App. B, Page 23a). On April 10, 2007 Mr. Gray executed the Enforcement Order and obtained custody of his children, Jonathon and Leeanna Gray in Maine. The children returned with their father to their family home in New Hampshire. Lisa Sorenson immediately reported Mr. Gray to the State of New Hampshire Division of Child Youth and Family Services (DCYF) claiming Mr. Gray abused his children. Mr. Daryl Bazydlo, Child Protective Service Worker contacted and spoke to Mr. Gray who cooperated with the investigation. Mr. Bazydlo also spoke to both children at their school; he investigated all of Lisa Sorenson's allegations.

Lisa Sorenson filed a motion for reconsideration in the Maine Biddeford District Court requesting that the court vacate its enforcement order. On April 11, 2006 Judge Robert M.A. Nadeau of the Maine Probate Court sent a letter to Judge Christine Foster of the Maine Biddeford District questioning Judge Foster's authority and asserting that he had exclusive jurisdiction over the custody of the children in his court. (*See* App. B, Page 15a, 19a). On April 18, 2006 the Salem District Court issued a Notice of Hearing setting May 11, 2006 to hear Mr. Gray's objection to Lisa Sorenson's petition to register her Maine guardianship orders in New Hampshire. On April 19, 2006 the Probate Court held "[t]he review hearing in this matter." (*See* App. B, Page 14a). On April 25, 2004 the Probate court issued a "Report of UCCJA Conference" asserting that Judge Nadeau had a 30-minute telephonic conference with Martial Master Bruce Dalpra of the Salem District Court on April 24, 2006. (*See* App. B, Page 14a). On April 25, 2006 Judge Foster held a hearing on Lisa Sorenson's motion for reconsider to vacate Mr. Gray's enforcement of order; Judge Foster reviewed the UCCJA report from the Probate Court. Mr. Gray was

represented by his New Hampshire counsel, Paula J. Werme. (*See* App. B, Page 15a). On April 27, 2006 Judge Foster of the Biddeford District Court entered an order that stated "[i]t remains concerned about the lack of actual notice provided to Mr. Gray in regard to the guardianship hearing conducted in the York County Probate Court." (*See* App. B, Page 12a). The Court granted Lisa Sorenson's Motion for Reconsideration and vacated its Ex Parte Order of April 7, 2006 which had already been executed by Mr. Gray on April 10. 2006 asserting the New Hampshire Orders which Mr. Gray sought to be registered in Maine had not been registered. (*See* App. B, Page 11a).

On May 1, 2006 Mr. Gray brought Jonathon and Leeanna to school that morning, he expected to pick up his children in the afternoon after school just like any other parent in the United States. At 10:00 a.m. that morning Lisa Sorenson went to the Salem District Court and filed an "Ex Parte "Emergency" Motion" for enforcement of her Maine guardianship custody decree requesting immediate custody of Mr. Gray and Ms. Gray's children. The Salem District court held an immediate ex parte hearing but gave no notice or opportunity to be heard either Mr. Gray or Ms. Gray. The Salem District Court then entered an "Order On Ex Parte Motion" dated May 1, 2006 which granted Lisa Sorenson's "emergency" motion. (*See* App. D, Page 135a). Mr. Gray was unaware that the Biddeford District Court had vacated its April 7th Enforcement Order. Lisa Sorenson had received that order and filed it with her "emergency" motion. Mr. Gray expected his children to be at the school when he arrived at 3:00 p.m. Instead he found his children missing, they were gone. On May 1, 2006 the Salem District Court also issued a Notice of Hearing "cancelling" the scheduled May 11, 2006 hearing on the merits of Lisa Sorenson's Petition to Register Foreign Order, effectively denying Mr.

Gray and Ms. Gray's the opportunity to be heard before the Court on May 11, 2006 on their objection to Lisa Sorenson's petition to register her foreign orders, thereby depriving the parents of custody of their children. (*See* App. D, Page 135a).

On May 2, 2006 the Maine Probate Court, on the first day Jonathon and Leeanna Gray were back in the State of Maine, granted Lisa Sorenson's pending petition for permanent guardianship by entering an "Order On Petition For Appointment Of Guardianship of Minor Alleging Intolerable Living Situation." (*See* App. B, Page 8a). There was only two hearings in the Probate Court, the initial February 7th, 2006 expedited hearing and the "as represented at the "review hearing" in this matter on April 19, 2006" reported by the Probated Court's "Report of UCCJA Conference dated April 25, 2006. (*See* App. B, Page 14a). There was never any "final hearing" as asserted by the Probate Court's May 2nd, 2006 order. The parents were never given "proper notice" and opportunity to be heard over any "final hearing." (*See* App. B, Page 9a,). On May 2, 2006 the Maine Probate Court also entered an "Appointment of Guardian of Minor" for each of Mr. Gray and Ms. Gray's children appointing Lisa Sorenson as "full guardian" who could retain custody. (*See* App. B, Page 5a). On May 18, 2006 Mr. Gray appealed the Probate Courts guardianship custody decree[s] to the Maine Supreme Judicial Court asserting Maine violated the PKPA, Maine's lack of subject matter and personal jurisdiction and procedural due process was denied. (*See* App. A, Page 3a).

On June 5, 2006, the State of New Hampshire Division of Child Youth and Family Services (DCYF), Mr. Daryl Bazydlo, Child Protective Service Worker conducted an official investigation into all of Lisa Sorenson's allegations

that Mr. Gray and Ms. Gray abused their children. Mr. Bazydlo went to their New Hampshire school and spoke directly with Jonathon and Leeanna with school officials who were present at the interview and later with Mr. Gray. On June 5, 2006 the State of New Hampshire DCYF stated that their assessment of Mr. Gray's family was complete and Lisa Sorenson's reported determinations that Mr. Gray and Ms. Gray had abused and neglected their children were UNFOUNDED and made no finding that either Mr. Gray or the children's mother Janette Gray was an unfit parent. (*See* App. D, Page 134a).

On January 9, 2007 the Maine Supreme Judicial Court denied Mr. Gray's appeal asserting the Maine complied with the requirements of federal public law 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980 thus creating the current intractable impasse between New Hampshire and Maine concerning Lisa Sorenson's custody of Jeffrey Gray and Janette Gray's children. (*See* App. A, Page 1a).

REASONS FOR GRANTING THE PETITON

I. THE FEDERAL QUESTION.

In *Thompson v. Thompson* this Court held that "The Parental Kidnapping Prevention Act (PKPA or Act) imposes a duty on the states to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act."[1] "In order for a state's court's custody decree to be consistent with the provisions of the Act, the State must have jurisdiction under its own law and one of five conditions set out 1738A(c)(2)

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1 484 U.S. 174, 176 (1988).

must be met."[2] "Briefly put, these conditions authorize the state court to enter a custody decree if the child's home is or recently has been in the State, if the child has no home State and it would be in the child's best interest for the State to assume jurisdiction, or if the child is present in the State and has been abandoned or abused. Once a State exercises jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute, 1738A(g), even if it would have been empowered to take jurisdiction in the first instance, and all the states must accord full faith and credit to the first State's ensuing custody decree."[3] This case arises out of a jurisdictional stalemate that came to pass notwithstanding the strictures of the Act.

The Maine Probate Court judge gave no deference to what this Court has said in *Thompson v. Thompson* or its federal duty under the federal PKPA law. Instead the judge's intentions are shown clearly when he said "A recent New Hampshire Supreme Court decision pertaining to the children indicates that, on remand to the New Hampshire trial court, the trial judge will lack authority to consider the petitioner as a custodial option for the children. In contrast this Court is less impeded regarding the selection of a guardian. See 18-A M.R.S.A. § 5-206,"[4]..."[h]as most recently been reviewed by the New Hampshire Supreme Court and pursuant to what's referred to as a slip opinion"... "This tape is being made on the 7th of February 2006"... "concerning guardianship

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2 *Id.*, 484 U.S. 174, 177 (1988).

3 *Id.*, 484 U.S. 174, 178 (1988).

4 *See* App. B, Page 38a.

petitions of Jonathon Gray and Leeanna [sic] Gray"... "I'm going to issue an ex-parte order of temporary guardianship".."[u]pon petition of Lisa Sorenson"..."The court further possess jurisdiction... [n]otwithstanding the assertion of concurrent jurisdiction over the affairs of the minors in the New Hampshire court system"... "Maine qualifies as the home state for purposes of further proceedings"... "[t]he court hereby appoints Lisa Sorenson as temporary guardian of the minor children, Jonathon Gray and Leeanna Gray"..."[t]o the exclusion of the minors' parents, the exclusive at-all decision making authority of every nature concerning the minor children."[5]

Maine's federal duty under 1738A(g) of the Act was mandatory, it "shall not" exercise jurisdiction in any proceeding and "shall" enforce according to its terms and shall not modify any custody determination made consistently with the Act. The New Hampshire custody decree(s) were consistent with the Act and were entitled to recognition and enforcement under the Act and the Full Faith and Credit Clause of the United States Constitution and it was Maine's federal duty was to recognize and enforce the custody decrees of New Hampshire. Under Maine law as an alternative remedy it was required to use any other law such as the PKPA that was available in Maine to enforce a foreign custody decree.[6]

New Hampshire's custody decrees were consistent with the provisions of the Act because under 1738A(c)(E) it had

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5 *See* "Official Transcripts of February 7, 2007 Expedited Hearing," App. B, Page 46a, 54a, 57a, 58a, 60a.

6 *See* M.R.S.A. §1763 Duty to Enforce. App. C, Page 115a.

continuing exclusive jurisdiction pursuant to subsection (d), New Hampshire have jurisdiction under its own state laws and New Hampshire remains Mr. Gray's residence.[7] The parents divorce decree provides that under 1738A(b)(4), the Federal Parental Kidnapping Prevention Act.[8]

In *Thompson v. Thompson* "[T]he Full Faith and Credit Clause obliges States only to accord the same force to judgments as would be accorded by the courts of the State in which the judgment was entered. Because courts entering custody orders generally retain the power to modify them, courts in other States were no less entitled to change the terms of custody according to their own views of the child's best interest. See New York ex rel. *Halvey v. Halvey*, 330 U.S. 610, 614 -615 (1947)."[9] Maine is no less entitled to change the terms the New Hampshire custody decree of its sister State of New Hampshire and even more so unauthorized to change its sister State of New Hampshire's supreme court's terms pertaining to Lisa Sorenson retaining custody of Mr. Gray and Ms. Gray's children. The review of any final judgment or decree of any State supreme court rests exclusively within the jurisdiction of this Court under 28 U.S.C. §1257(a), not within Maine state court's jurisdiction. Lisa Sorenson's proper recourse to the final judgment of the Supreme Court of New Hampshire was to either file a motion for rehearing with that court or petition this Court under 28 U.S.C. § 1257(a), not in forum shopping the courts of Maine..

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7 *See* App. C, Page 123a, 124a, 128a; 132a.

8 *See* App. D, Page 167a and Page 178a.

9 484 U.S. 174, 176 (1988).

The context of the PKPA is the principal problem Congress was seeking to remedy, a parent who lost a custody battle in one State had an incentive to engage in 'forum shopping in another State to relitigate the custody issue in a new forum. As the legislative scheme suggests, and as Congress explicitly specified, one of the chief purposes of the PKPA is to "avoid jurisdictional competition and conflict between State courts." Pub. L. 96-611, 94 Stat. 3569, 7(c)(5), note following 28 U.S.C. 1738A.[10] It is this circumstance that has resulted in the jurisdictional deadlock in this case.[11] Congress also intended to that parents avoid excessive litigation. Mr. Gray and Ms. Gray have spent three and half years of excessive litigation over their children with respect Lisa Sorenson retaining custody of their children and the children have been without their mother and father, their natural family. The petition should be granted for ultimate review of Maine's duty to comply with the federal law PKPA.

II. INTERSTATE EMERGENCY JURISDICTION INVOKED TO ESTABLISH PERMANENT CUSTODY DECREES VIOLATES THE PKPA

The Maine probate court never specified it was invoking "temporary emergency jurisdiction," it justified its ex parte action on the probability of harm in the absence of its taking action and bootstrapped emergency jurisdiction onto their assumption of jurisdiction under the venue portions of its guardianship state statute and a "home state" analysis when there was already a New Hampshire home state to justify the

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10 *Id.* 484 U.S. 174, 182 (1988)

11 *Id.* 484 U.S. 174, 182 (1988)

permanency of its orders, its intention was to appoint a permanent guardian. The ex parte order did not comply with Maine's UCCJEA emergency jurisdiction statute requiring "a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under section M.S.R.A. §1745 to 1747. The Maine UCCJEA emergency jurisdiction statute requires that "the order issued in this State remains in effect until an order is obtained from another state within the period specified or the period expires." If there was an "emergency" requiring intervention by a Maine court, without the Maine UCCJEA statutorily required language specifying when the temporary guardianship order expired, by operation of Maine law, the ex parte order expired when the New Hampshire supreme court issued its Mandate and Remand Order back to the Salem District Court on February 13, 2006.

Maine adopted under its state laws the Uniform Child Custody Jurisdiction Act (UCCJA) and replaced it with the revised Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). One of the reasons the UCCJA was revised was to clarify when a court could take emergency jurisdiction. The Maine UCCJEA makes clear that emergency jurisdiction shall be exercised to protect a child on a temporary basis only until the court with the appropriate jurisdiction issued a permanent order.[12] Neither the UCCJEA nor its predesor UCCJA "contemplated to be a vehicle for a state to attain modification jurisdiction on an ongoing basis or for an indefinite period of time."[13]

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12 9 West's U. Laws Ann., *supra*, U. Child Custody Jur. & Enf. Act, Prefatory Note, p. 651

13 *In re Joseph D., supra*, 19 Cal.App.4th at p. 691.

Assumption of emergency jurisdiction does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition.[14] This comports with this Court holdings in *Thompson v. Thompson* "Once a State exercises jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute even if it would have been empowered to take jurisdiction in the first instance"[15] The Maine Supreme Judicial Court's judgment that the guardianship custody decree complied with the PKPA is wrong and it does not comport with this Court opinions.

Mr. Gray respectfully asserts that if the Maine Supreme Court decision, if allowed to stand, it destroys and ignores the Congressional intent to create order and sanity in an area where the parents have no other means to enforce their out-of-state custody decrees with a state court that is unwilling to comply with its federal mandate to comply the PKPA and instead chooses to optionally comply. Review of this petition by this Court is critically important to parents and children alike where a state asserts concurrent jurisdiction as temporary emergency jurisdiction with the intentions of issuing permanent custody decrees in conflict with the childrens' home state jurisdiction in violation of the PKPA.

III. PROCEDURAL DUE PROCESS WAS DENIED

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America provides no States shall deprive any person of life, liberty or property

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14 *Id.* at pp. 689-690.

15 484 U.S. 174, 178 (1988).

"without due process of law." In *Hager v. Reclamation Dist* this Court held due process must be pursued in the ordinary mode of prescribed law.[16] The core of these requirements is notice and a hearing for an opportunity to be heard before an impartial tribunal. In *Mullane v. Central Hanover Trust Co.,* notice is an elementary and fundamental requirement in any proceeding reasonable calculated, under all circumstances to apprise all interested parties of the pendency of an action and afford them an opportunity to present their objections.[17] In *Goldberg v. Kelly* the notice must be sufficient to enable the receipt to determine what is being proposed and what he must do to prevent the deprivation of his interest.[18] In *Baldwin v. Hale* "Parties whose rights are to be affected are entitled to be heard."[19] In *Stanley v. Illinois* this Court held that "we have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody."[20]

The Maine Court Rules of Probate Procedure (M.R.Prob.P.) Rule 12(2) states in part "In formal probate proceeding for.. [g]uardianship.., the notice of hearing shall set a date for a hearing which shall be... [a]t least 14 days after the completion of service upon all persons to be served. Under Maine state law M.R.S.A. §5-207 "a notice must be given at least 5 days before a hearing and due diligence of

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16 111 U.S. 701, 708 (1884).

17 339 U.S. 306, 314 (1950).

18 397 U.S. 254, 267-68 (1970).

19 68 U.S. (1. Wall.) 223, 233 (1863).

20 405 U.S. 645, 658, 92 S.Ct. 1208 (1972).

giving that notice is required."[21] The Probate Court waived its notice to the parents and entered an ex parte temporary guardianship. Mr. Gray and Ms. Gray never received one word that Lisa Sorenson filed guardianship petitions over their children in a Maine court or received notice of before a hearing took place, when the hearing did take place without the parents an order was entered that deprived the parents custody of their children. In *D.B. and T.B. v. M.A.* the Alabama Appeals Court held that when another state enters a custody order without providing proper notice to a relevant party, or without giving that party reasonable opportunity to be heard, such order was not made in accordance with the PKPA and its is "not entitled to full faith and credit and the Supreme Court of Alabama has observed that "neither the Full Faith and Credit Clause of the United States Constitution, nor any legislation under its authority, entitles a child custody [judgment] entered by a court lacking in peronam jurisdiction over affected parties to extraterritorial effect."[22] In *In Re The Adoption of a Child, K.L.L,* the Colorado Court of Appeals held "[t]hat notice of the guardianship proceeding must be given to the parents. Failure to notify the parties constitutes a violation of due process sufficient to deprive the court of jurisdiction, rendering any orders void. Although the court entered an

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21 *See* M.R.S.A. §5-207, App. C, Page 107a.

22 2006 Ala. Civ. App. 2006 LEXIS 602; *Ex Parte Raywood*, 549 So. 2d 103, 104 (Ala. Civ. App. 1989), *Ex Parte Dean*, 447 So. 2d 733, 737 (Ala. 1984), *Mav v. Anderson*, 345 U.S. 528, 543, 73 S. Ct. 840, 97 L. Ed. 1221, 67 Ohio Law Abs. 468 (1953); *Kulka v. Superior Court of California*, 436 U.S. 84, 91, 98, S. Ct. 1690, 56 L. Ed. 2d. 132 (1978).

order extending the temporary guardianship, that order was void for lack of notice to mother and father."[23]

IV. MAINE GUARDIANSHIP STATUTE IS UNCONSTITUTIONAL

This Court has said in *Troxel v. Granville* "The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington* v. *Glucksberg,* 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno* v. *Flores,* 507 U. S. 292, 301-302 (1993). The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer* v. *Nebraska,* 262 U. S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce* v. *Society of Sisters,* 268 U. S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t] he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535. We returned to the

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23 No. 06CA1884. *In re the Adoption of a Child, K.L.L*

subject in *Prince* v. *Massachusetts,* 321 U. S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166. In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g.*, *Stanley* v. *Illinois,* 405 U. S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children `come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin* v. *Yoder,* 406 U. S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin* v. *Walcott,* 434 U. S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham* v. *J. R.*, 442 U. S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky* v. *Kramer,* 455 U. S. 745, 753 (1982) (discussing "[t] he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg*, *supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the `liberty' specially protected by the Due Process Clause includes the

righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[24]

Maine's Section 18-A M.R.S.A. §5-206 and 18-A M.R.S.A § 5-204(c) allows "any person" and more than any one person be appointed a guardian over children and authorizes state courts to make these appointment(s) without the consent of their natural parents based soley on a judge's determination that an undefined and unconstitutionally vague "intolerable living situation" exists regardless of a level of jeopardy to the child which would rise to the level of parental unfitness and it is in the best interest of a child. The statutes are breathtakingly broad which effectively permits a court to disregard and overturn any decision by a fit parent concerning because the parents consent is not required nor their estimation of the child's best interest is given deference or special weight since the appointment can be made over their objections. As applied to Jeffrey and Janette Gray who are non-residents of Maine, who have not been found to be judicially unfit in the states in which they are citizens of, and their family in this case, the statutes unconstitutionally infringes upon and violates the fundamental "liberty interests" of the natural parents right to make decisions for, care, custody and control over their children protected by the substantive component of the Due Process Clause of the Fourteenth Amendment of the United State Constitution and under as in the case of *In the Matter of Jeffrey Gray and Janette Gray* and as in this Courts case of *Troxel v. Granville* and is therefore unconstitutional.

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24 530 U.S. 57 (2000)

CONCLUSION

The judgments of both state supreme courts are final and do not agree with one another with respect to Lisa Sorenson retaining custody of the natural parents' Jeffrey and Janette Gray's children. The parents have no other available relief other than in this Court, they have no private cause of action in federal court as this Court as said in *Thompson v. Thompson* and that "ultimate review remains available in this Court for truly intractable deadlocks." Consideration of this petition has now become ripe for this Court's exercise of its jurisdiction to determine whether the federal constitutional rights have been violated and which of two conflicting state supreme court custody decisions is valid.

For all of the various reasons presented above, Petition for Writ of Certiorari should be granted.

DATED: April 27, 2007

Respectfully submitted

JEFFREY M. GRAY
Petitioner